the cable operator. The cable operator would have a relatively brief period, e.g., 10 or 15 days, in which to respond.

165. If, at that point, the Commission determines that a prima facie case of violation of our rules pursuant to Section 612(c) has been made, the burden of production would then shift to the operator to disprove the allegations. At this stage, we might also issue an order requesting further information from the operator, under procedures analogous to those established for complaints of unreasonable rates.[214] We seek comment on this approach. We also ask whether it would be consistent with Section 612(h) of the Communications Act, which creates a presumption that,

> the prices, terms and conditions for use of channel capacity designated pursuant to subsection (b) [of Section 612] are reasonable and in good faith unless shown by clear and convincing evidence to the contrary.[215]

166. We propose that if a petitioner has made out a prima facie case of a violation of our rules promulgated pursuant to Section 612(c), this case would be sufficient to rebut the presumption that the prices, terms and conditions for leased access are reasonable. If such allegations are proven, they would constitute clear and convincing evidence of unreasonable practices or rates and meet the burden of proof imposed under the Act. We seek comment on this approach. We also seek comment on alternative approaches to reconciling the provisions of the 1984 Act, which presume that the operator's good faith prices, terms and conditions are reasonable, with the provisions of the 1992 Act, which require us to establish reasonable terms and conditions and to determine maximum reasonable rates for leased access.

167. As a matter of general policy, we also believe that parties should bring complaints to the Commission's attention in a timely manner. This policy will help to guard against determinations based on a stale record, as well as forestall development of any patterns of abuse.[216] We also propose to give oral rulings in those situations in which time is of the essence, to be followed by a written formal ruling. We seek comment on what types of cases might be appropriate for such emergency treatment. We tentatively find that rate disputes, which are generally complex in nature, should not be the subject of emergency action at the Commission. Moreover, we believe that it would be possible in such cases to devise procedures that will enable a user to have access before a Commission decision is made. We propose to require that the user provide some form of security, e.g., establish an escrow account, while the rate dispute is being determined, and

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214 See generally paras. 97-110 supra.

215 Communications Act, § 612(f), 47 U.S.C. § 532(f).

216 Furthermore, the Communications Act also provides for time limitations on the assessment of forfeitures. See, e.g., Communications Act, § 503(b)(6)(B), 47 U.S.C. § 503(b)(6)(B).

seek comment on the fairness of this procedure to all parties involved.

168. We seek comment on the use of Alternative Dispute Resolution ("ADR") for leased access petitions filed at the Commission. The legislative history, as indicated above, reflects concern that "cumbersome" administrative procedures may have limited usefulness for leased access.[217] In light of this history, when the circumstances of a given case are fairly straightforward, we tentatively conclude that ADR may be the most appropriate means of resolving conflicts by providing both expedition and cost-effectiveness.[218] We also assume that it could be made available to parties in the franchise area in which they are located, adding the benefit of geographic convenience in such cases. The election of mediation by the parties would be purely voluntary, under the Administrative Dispute Resolution Act, 5 U.S.C. §582(c)(1990).

169. We seek comment on this approach, and on whether we should encourage its use. We also seek comment on whether parties should be permitted to elect ADR at the outset of a dispute or whether election should take place only at the time we rule that a prima facie case has been established. We also seek suggestions on what types of disputes would be most suitable for ADR. Specifically, we seek comment on whether conflicts concerning rates, credit terms, technical quality, or other terms or conditions would reasonably lend themselves to resolution by mediation, or whether certain categories of disputes would be better resolved by other means.

170. We also seek comment on whether and how we might enlist the assistance of local franchising authorities in resolving leased access disputes. Disputes concerning leased access may be so time sensitive that they would be better handled by local decision makers. We thus ask whether parties should be permitted to seek resolution of leased access disputes by franchising authorities. We seek comment on whether this option should be voluntary, or possibly be required as a prerequisite to review by this Commission. On the latter point, we seek comment on whether such a requirement would be consistent with the language and intent of the Cable Act. Finally, we seek comment on what types of leased access disputes may be suitable for franchising authority resolution.

d. Leased Access for Minority and Educational Programmers

i. Statutory Requirements

171. The Cable Act permits a cable operator to place programming from a qualified minority or educational programming source on up to 33 percent of the cable system's designated leased access channels. Programming already

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217 House Report, supra, at 40. See also Senate Report at 31.

218 See Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in which the Commission is a Party, 6 FCC Rcd 5669, 5670 (1991).

carried by a cable system as of July 1, 1990 does not qualify as minority or educational programming for purposes of this section.[219] The Act defines a qualified minority programming source as one that devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned, as the term minority is defined in Section 309(i)(3)(C)(ii) of the Communications Act. The Act defines a qualified educational programming source as one that devotes substantially all of its programming to educational or instructional programming that promotes public understanding of mathematics, the sciences, the humanities, and the arts and has a documented annual expenditure on programming exceeding $15 million.[220]

ii. Discussion

172. We propose to adopt this subsection as part of our rules. The Cable Act defines "minority" with reference to Section 309(i)(3)(C)(ii) of the Communications Act, which identifies Blacks, Hispanics, American Indians, Alaska Natives, Asians, and Pacific Islanders as minority groups. We thus tentatively find that, for purposes of the minority programming provision, programming that covers "minority viewpoints" or is "directed at members of minority groups" would have to cover the viewpoints of or be targeted to members of the above-listed groups. We seek comment on this proposal and tentative conclusion. We also propose to reflect the statutory definition of educational programming source described above in our rules. We seek comment on this proposal.

173. The Act qualifies minority and educational programming sources for leased access under this section if they devote "substantially all" of their programming to the coverage of minority viewpoints or to educational or instructional programming.[221] We seek comment on the amount or proportion of programming necessary to fulfill this requirement.

C. Subscriber Bill Itemization

1. Statutory Requirements

174. Section 622(c) of the Communications Act, as amended by the Cable Act, permits a cable operator to itemize, on separate lines on each regular subscriber bill, (1) the amount of that bill attributable to the franchise fee, together with the identity of the franchising authority to which the fee is paid, (2) the amount attributable to the support or use of public, educational, or governmental channels which is required under a franchise agreement, and (3) the amount of the total bill attributable to any other governmental assessments on transactions between the operator and the

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219 Communications Act, § 612(i), 47 U.S.C. § 532(i).

220 Communications Act, § 623(i)(3), 47 U.S.C. § 532(i)(3).

221 Communications Act, § 612(i)(2), § 612(i)(3); 47 U.S.C. § 532(i)(2), 47 U.S.C. § 532(i)(3).

subscriber.[222]

2. Discussion

175. The Conference Report states that an amendment was made to the legislation to clarify that itemization must be done in a manner consistent with our regulations implementing Section 623.[223] The House Report indicates that only direct and verifiable costs within the above-listed categories may be so itemized.[224] Section 623 provides that rules governing basic service rates shall take into account "the reasonably and properly allocable portion" of amounts assessed as franchise fees, taxes, or governmental charges assessed on operator/subscriber transactions, and any amount required to satisfy franchise requirements to support public, educational, or governmental channels, or the use of such channels under a franchise.[225] We seek comment on the possible differences and the interrelationships between Section 622(c) and Section 623. The House Report also indicates that Congress explicitly intended that such costs be itemized as part of the total bill, but not separately billed.[226] We propose to reflect this Congressional intent in our rules incorporating Section 622(c). We seek comment on this proposal, and on any other regulations that may be necessary to adequately implement this provision.

III. Initial Regulatory Flexibility Act Analysis

176. Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1981).

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[222] Communications Act, § 622(c), 47 U.S.C. § 542(c).

[223] Conference Report at 84.

[224] House Report at 86.

[225] Communications Act, § 623 (b)(2)(C)(v), (vi), 47 U.S.C. § 543 (v), (vi). Section 623 (b)(2)(C)(v) also requires that our rules take into account assessments of "general applicability" imposed on cable operators or subscribers. We do not interpret Section 622(c) as applying to such generally applicable assessments and seek comment on this view.

[226] House Report at 86.

177. Reason for action. The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service, including rates for equipment and installation, and procedures for implementation and enforcement of those rules. The Cable Act of 1992 also requires the Commission to establish criteria for identifying unreasonable rates for cable programming services, and procedures for resolving complaints regarding cable programing services. In addition, the statute requires the Commission to establish rules for determining the reasonable terms and conditions and maximum reasonable rates for leased commercial assess, including billing and collection.

178. Objectives. To propose rules to implement Sections 3 and 14 and those portions of Section 9 pertaining to rate regulation, of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

179. Legal basis. Action as proposed for this rulemaking is contained in Sections 4(i), 4(j), 303(r), 612(c), 622(c) and 623 of the Communications Act of 1934, as amended.

180. Description, potential impact and number of small entities affected. Until we receive more data, we are unable to estimate the number of small cable systems that would be affected by any of the proposals discussed in the Notice of Proposed Rulemaking. We have, however, attempted to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by Section 3(i) of the Cable Act of 1992.

181. Reporting, record keeping and other compliance requirements. The proposals under consideration in this Notice of Proposed Rulemaking include the possibility of new reporting and record keeping requirements for cable systems.

182. Federal rules which overlap, duplicate or conflict with this rule. None.

183. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. Wherever possible, the Notice proposes general rules, or alternative rules for small systems, to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by Section 3(i) of the Cable Act of 1992.

IV. Paperwork Reduction Act

184. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of

Management and Budget as prescribed by the Act.

V. Procedural Provisions

185. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that ex parte contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft Order proposing a substantive disposition of the proceeding is placed on the Commission's Open Meeting Agenda. In general, an ex parte presentation is any written or oral communication (other than formal written comments or pleadings and oral arguments) between a person outside this Commission and a Commissioner or a member of this Commission's staff which addresses the merits of the proceeding. Any person who submits a written ex parte presentation must serve a copy of that presentation on this Commission's Secretary for inclusion in the public file. Any person who makes an oral ex parte presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. On the day of the oral presentation, that written summary must be served on this Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally Section 1.1231 of the Commission's Rules. 47 C.F.R. § 1.1231.

186. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before **January 27, 1993** and reply comments on or before **February 11, 1993**. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. For further information on this proceeding contact Patrick Donovan at (202) 632-1295, Regina Harrison at (202) 632-7792, Jay Atkinson at (202) 634-1861, Hugh Boyle at (202 634-1861, Alan Aronowitz at (202) 632-7792, or Nancy Boocker at (202) 632-6917.

V. ORDERING CLAUSES

187. Accordingly, IT IS ORDERED, that, pursuant to Sections 4(i), 4(j), 303(r), 612(c), 622(c) and 623 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 303(r), 532(c), 542(c), 543, NOTICE IS HEREBY GIVEN of adoption of proposed regulatory changes and amendments to the Commission's rules and regulations in accordance with the proposals, discussions, and statements of issues in this Notice of Proposed Rulemaking, and that COMMENT IS SOUGHT regarding such proposals, discussion, and statements of issues.

188. IT IS FURTHER ORDERED, that a rulemaking proceeding IS INSTITUTED to implement Sections 623, 612, and 622(c) of the Communications Act of 1934, as amended by the the Cable Television Consumer Protection and Competition Act of 1992.

189. IT IS FURTHER ORDERED, that commenters SHALL ADDRESS in a separate section of their comments issues concerning leased commercial access raised in paragraphs 144-73, supra.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Donna R. Searcy
Secretary

Appendix A

Proposed Cost Accounting Requirements

Part 76 of the Commission's rules is amended to add a new Subpart L -- Accounting and Cost Allocation Requirements to read as follows:

Subpart L -- Accounting and Cost Allocation Requirements

76.701 General Accounting Requirement

For the purpose of making cost determinations required by the Commission, cable operators shall maintain their accounts in accordance with generally accepted accounting principles except as otherwise directed by the Commission. For purposes of this section, cable service includes all programming services offered to subscribers and leased commercial access.

Each cable operator shall maintain accounts in a manner that will enable it to identify on a system basis and to apply assignment and allocation procedures where specified by the Commission, to the following categories of expenses and revenues:

Expenses:

- Operating Expenses:
  - Technical (operation and maintenance of cable system)
  - Programming
  - Marketing
  - General & Administrative
- Depreciation on Fixed Assets
- Amortization on Intangibles including Goodwill
- Interest on Debt:
  - Debt associated with allowable ratebase as defined in §76.702.
  - Other Debt
- Income Taxes

Revenues:

- Subscription Fees:
  - Basic Tier
  - Other Tiers
- Advertising
- Equipment:
  - Installation
  - Maintenance and Repair
  - Sale
  - Lease
- Pay-per-view
- Leased Access:
  - Access
  - Billing and Collection Service
- Other

76.702 Cost Categories

Costs recoverable for cable services regulated by this Commission shall include operating expenses, and depreciation, amortization, return and taxes on the allowable ratebase. The allowable ratebase shall include, except as limited by the Commission, the average annual investment in the following categories:

Net Working Capital (Current Assets - Current Liabilities)
Fixed Assets (Net of Accumulated Depreciation):
- Land and Buildings
- Headend
- Trunk and Distribution System
- Program Origination Equipment
- Construction Work in Progress
- Other Fixed Assets

Other Assets excluding Goodwill (Net of Accumulated Amortization)
Goodwill (Net of Accumulated Amortization)

76.703 Joint and Common Costs

Allowable costs as specified in §76.702 which cannot be directly assigned to cable services (all tier services, leased access, and pay channels), to installation, maintenance, and repair of customer equipment, or to other services, shall be described as joint or common costs. Cable operators shall be capable of determining on a system level the joint and common costs for providing cable services. System level joint and common costs shall include corporate level overheads allocated proportionately to the system on the basis of the number of subscribers served by the system over the total number of subscribers served by the corporation.

Joint and common costs shall be allocated among service categories (e.g., cable services, equipment installation services) as follows:

(a) Wherever possible, joint and common costs are to be allocated to service categories based on direct analysis of the origin of the costs themselves.

(b) When direct analysis is not possible, joint and common costs shall be allocated to service categories based on an indirect, cost-causative linkage to other costs directly assigned or allocated to the service category.

(c) When neither direct nor indirect measures of cost allocation can be found, the joint and common costs shall be allocated to each service category based on the ratio of all costs directly assigned and attributed to a service category over total costs directly assignable and attributable.

76.704 Per Channel Costs

Cable systems shall determine per channel costs on a system basis. Per channel cost determinations for a system shall employ the following general methodology for tier-services and leased access capacity:

(a) The per-channel cost for any particular channel shall include the direct assignment of any costs associated with the programming of such channel.

(b) Where a per-channel cost determination is required for a leased access service channel, a portion of the joint and common costs of providing cable service as determined under Section 76.703 shall be included. The amount of joint and common costs allocated to a leased access channel shall be the total amount of joint and common costs of providing cable service divided by the total number of usable activated channels over which cable service including leased commercial access is being provided on the system.

(c) The joint and common costs included in the cable services category shall be allocated to tier-services on the basis of the ratio of the number of tier-services channels used to the total number of usable activated channels over which service is being provided in the system. This amount shall then be allocated to each tier-service channel on the basis of the proportion of the direct expenses assigned to each channel over the total expenses directly assigned to tier-services channels.

76.705 Tier Services Costs

Cable systems shall determine the total costs for each service tier by assigning to each tier the total of any non-programming and programming costs directly assignable to the tier, and the joint and common costs and return element allocated to each channel in the tier, less that portion of advertising revenues on the channels in the tier determined by the Commission.

76.706 Leased Access Services Costs

The cost of lease access service shall be based on the per channel costs for leased access service plus any direct costs associated with the lease access activity.

76.707 Equipment Services Costs

(a) The cost of installation, lease, maintenance and repair of customer equipment shall include all direct material and labor costs associated with those activities, plus any joint and common costs assignable to the activity as determined by the methodology specified in §76.703.

APPENDIX B

Cost-of Service Standards

1. Cost-of-service regulation requires the regulatory authority to make determinations relating to four major cost components: rate base, the cost of capital, depreciation, and operating expenses. Cost-of-service regulation also generally requires rules governing the design of rates once determinations have been made concerning the four major cost components. In order to permit adoption of standards for cost-of-service showings for cable operators seeking to justify rates above a benchmark, we solicit comment on the what requirements we should adopt in each of these areas and on the particular issues raised below.

2. Rate Base. Rate base determines the investment upon which a company is allowed to base depreciation and to earn a return. The costs the regulated company may include in the rate base have traditionally been determined by applying the used and useful standard to the original construction cost of the assets dedicated to service.[227] Under full rate of return regulation, cost allowances or disallowances can be made, for example, for cash working capital, excess spare capacity, plant under construction, and plant held for future use. We seek comment on whether we should apply the used and useful standard to govern what cable operators may include in the rate base for cable service.

3. Goodwill is the accounting term for the premium paid over original cost to acquire an existing system including the franchise and the existing plant and equipment. The direct benefit of the premium is to the operator selling the system, not the cable customer, since it contributes nothing to the plant supporting service to customers. Indirectly, customers may benefit from the sale if the purchaser is able to realize operating efficiencies unobtainable by the seller. In competitive markets, premiums over original cost are presumably rooted in potential operating efficiencies. In non-competitive markets, however, premiums may, at least in part, be predicated

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227 This Commission has applied the used and useful standard to communications common carriers under rate of return regulation. See, American Telephone and Telegraph Company, 9 FCC 2d 30 (interim Decision), aff'd on recon. 9 FCC 2d 960 (Docket 16258) (1967); American Telephone and Telegraph Co., 64 FCC 2d 1 (Docket 19129 Phase II Decision) (1977), recon. in part, 67 FCC 2d 1429 (Docket 19129 Reconsideration Order) (1978). For the concept of basing utility rates on used and useful assets, see, Munn v. Illinois, 94 US 113, 134 (1877); Stone v. Farmer's Loan and Trust Co., 116 US 307 (1886); Reagan v. Farmer's Loan and Trust Co., 154 US 362 (1894). For valuation of used and useful assets at net investment in plant and property, see, Los Angeles Gas and Electric Co. v Railroad Commission of California, 289 US 287 (1933); Missouri ex rel. Southwestern Bell Telephone Co. v. Public Service Commission, 262 US 276 (1923); Minnesota Rate Cases (Simpson v. Shepard), 230 US 352 (1913); San Diego Land and Town Co. v. National City, 174 US 739 (1899).

on the expectation that customers have no alternative to paying a rate for service that includes a monopoly rent component.

4. The Cable Act of 1992 found that cable operators face no effective competition in most markets, and that cable service customers have experienced rapidly increasing rates since deregulation. It is possible therefore that at least in some cases purchase premiums for cable franchises reflect some expectation of monopoly profits. We seek comment on the extent to which goodwill represents the capitalization of operating efficiencies that could not have been realized by the original cable system operator and, therefore, should be included in the rate base, and on how this element of goodwill can be quantified. To the extent goodwill does not represent such a capitalization of operating efficiencies, we ask whether we should limit a cable system's ability to recover goodwill from its subscribers by excluding some or all of it from rate base. We seek comment on the impact of this determination on the cable industry, investors, and subscribers.

5. We also seek comment on how customer equipment should be treated in terms of a cable system's rate base. Should it be treated as a current expense and excluded from the rate base or should it be included and permitted to earn revenue over time? Should it be treated differently depending on the extent to which the cost is recovered when the equipment is placed in use or the installation complete? It would be unrealistic and unfair to burden early subscribers with peak investment made for anticipated future increases in subscribership. One way to avoid this outcome would be to exclude part of first building investment from the rate base by including in that base only a portion of this investment, for example, twice the subscriber penetration percentage, during an introductory period of the shorter of 5 years or until 50% penetration is achieved, and capitalizing the identifiable interest expense associated with excluded plant. A somewhat more favorable treatment for cable operators would be to allow all investment in rate base, but, during an introductory period, reduce the revenue requirement by capitalizing the interest expense on the complement of investment times twice the penetration percentage. Investments in periodic rebuilds to add channel capacity would be excluded from rate base as plant held for future use until the channels are in service. Comment is sought on ways fair to both subscribers and operators of reducing the burden on ratepayers of cyclical investment. Comment is also sought on the impact of such changes on cable systems.

6. We also seek comment on whether a cable system's rate base should exclude customer equipment and be reduced by investment associated with customer equipment installation and maintenance. Customer equipment includes converter boxes, remote control units and any other equipment furnished to the customer subscribing to the basic tier or programming services. For purposes of ratemaking, the Cable Act of 1992 separates the installation and leasing of customer equipment from the provision of basic tier services.[228] The Commission has relied on time reporting and other

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228 See discussion in paras. 62-71, supra, concerning ratemaking for customer equipment and installation.

allocation methods to apportion maintenance costs between the regulated and non-regulated functions of common carriers. Comment is sought on how to apportion joint and common costs of providing basic tier service and equipment between these two functions. What methods or rules do operators use today to identify the share of such costs associated with the provision of basic tier service?

7. Cost-of-Capital. Generally the largest single expense after depreciation for a capital intensive industry is the cost of borrowing capital. Under applicable standards governing cost-of-service regulation, rates for a public utility must be set to permit it to earn a return on its capital investment that is sufficient to assure confidence in the capital soundness of the utility, to maintain its credit, and to attract capital.[229] This is usually referred to as the capital attraction standard. In order to assure that this standard is met, it is necessary for the regulatory authority to determine the cost of capital for the regulated enterprise. This is usually done on an industry-wide basis. Thus, it may be necessary to establish a cost of capital for cable companies seeking to make a cost-of-service showing.

8. The capital structure and debt and equity costs of many cable companies are different than that of mature public utility companies. Much of the debt and equity invested in the cable industry is not publicly held and poses evaluation and confidentiality problems. Of the few cable companies with widely traded public stock, several have in the recent past posted large losses in equity value and appear to be trading on the expectation that the long-term growth rate in earnings will be extremely high.[230]

9. The cost of capital for companies facing effective competition is predicated on the expectation that it is difficult to exceed the competitive return. The return stock holders expect and debt holders demand thus primarily reflects investor perception of the financial and business risk of the individual company. The Cable Act of 1992 reflects the view that many cable markets are not competitive and that the resulting industry market power has been used its market power to raise rates above competitive levels.[231]

10. The cost of capital for cable companies may be substantially influenced by investor hopes for profits in excess of what competition would allow and fears of government intervention to reduce those profits. We ask whether expectations of future government regulation could cause the

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229 See e.g., Bluefield Water Works Improvement Co. v. PSC, 262 U.S. 679 (1923), FPC v. Hope Natural Gas, 320 U.S. 591 (1944).

230 See Institutional Brokers Estimate System (IBES), Monthly Summary Data Book (July 18, 1991), Lynch, Jones, and Ryan, 345 Hudson Street, New York, N.Y. 10014

231 Cable Act of 1992, § 2 (a) (1)-(5).

observed cost of capital for cable companies to be far higher than would be necessary to induce investors to supply capital for providing cable service under a cost-of-service regulatory regime. We ask whether it is correct that providing basic tier cable service and cable programming services is no more risky than, for example, what the Standard & Poors 400 industrial companies do.

11. In the 1990 LEC Represcription Order[232] this Commission used the S&P 400 companies to establish equity market benchmarks in setting a cost of equity for interstate access service. We found that there was no convincing evidence that the riskiness of regulated monopoly telephone operations exceeds the riskiness of non-regulated firms subject to full competition. We concluded that the cost of equity for interstate access should be well below the median for the S&P 400.[233] We seek comment on how a fair cost of capital for cable services should compare to the average cost of capital for the companies in the S&P 400. We seek comment on whether the prescribed cost of capital for the cable industry should be higher, lower or the same as that allowed other regulated industries. We seek comment generally on if and how we should determine the cost-of-capital of cable companies.

13. Depreciation. Depreciation affects revenue requirements in two ways. Depreciation expense, calculated as the depreciation rate times gross plant, spreads the recovery of the capital invested in plant over its useful life. Accumulated depreciation reserve is the sum of returned capital and is subtracted from gross plant to calculate the rate base to which the prescribed rate of return is applied. Traditionally this Commission has reviewed the depreciation rates and practices of the companies it regulates. Allowable depreciation expense has been defined using straight line depreciation over the expected service life of plant investment. We seek comment on the expected service life of cable plant and current industry depreciation practices, and the methods the industry now uses to determine annual depreciation expense, e.g., straight line vintage life group or straight line equal life group.

14. The use of an original cost rate base requires a determination of the depreciation reserve. The book reserves of cable companies were not accumulated on the basis of prescribed depreciation rates. Comment is sought on the impact of using existing book reserves and prescribing depreciation expense on the basis of expected remaining service life.

15. To the extent that we deferred recovery of capital costs of certain facilities during some introductory period to avoid ratepayer burden, we would propose also to defer recovery of the associated depreciation

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232 Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, Order, 5 FCC Rcd 7507 (1990) (1990 LEC Represcription Order), recon. denied, 6 FCC Rcd 7193 (1991), petitions for review docketed sub nom., Illinois Bell Telephone Co., et al. v. FCC, No. 91-1020 (D.C. Cir. filed January 11, 1991).

233 1990 LEC Represcription Order 5 FCC Rcd at 7528.

expense. One way to accomplish this is to allocate depreciation on the units of production method. Each year's depreciation expense would be related to its fraction of the total paying subscriber years of service expected over the life of the investment.

16. We solicit comment on requiring that goodwill, to the extent that it is allowed in the rate base, be amortized over the remaining life of the associated franchise or, alternatively, over 40 years the generally accepted practice under GAAP. We ask whether this would be appropriate for the cable industry. We also seek comment on whether the amortization of goodwill not in rate base should be an allowable expense and what is the appropriate amortization period.

17. Operating Expense. Operating expenses include plant specific costs (e.g., maintenance), plant non-specific costs (e.g., power, engineering and testing), customer operations (e.g., marketing, billing and collection), and corporate operations (e.g., planning, accounting, finance, and legal). Operating costs would also include the costs of obtaining and transmitting programming. For a cable operator serving a single franchise and having no other operations, we seek a simple method of identifying the operating expenses that should be recoverable from cable services. We note that the Cable Act of 1992 appears to require that the investment, expenses, and revenue associated with the installation, maintenance, and leasing of customer equipment used to receive the basic tier be segregated for determining the costs recoverable from equipment charges. For multi-franchise operators, allowable costs may be directly attributable to a particular service within a franchise area or apportioned on the basis of relative number of subscribers or households passed, relative plant investment, or actual use factors (e.g., maintenance trips.) We seek comment on whether cable systems' property records are sufficiently detailed to support apportionment based on plant investment and what actual use factors are widely available.

18. Design of Rates. The revenue requirement consists of operating expenses, depreciation expense, franchise fees and related costs, taxes and return on rate base. The link between the revenue requirements and rates is the apportionment of cost recovery among services and ultimately subscribers. We solicit comment on two alternative methods of identifying the portion of the revenue requirement recoverable in basic service rates. We could calculate the basic tier costs as direct channel costs, less direct channel revenues, plus an allocation of other costs based on relative number of channels in use. This would represent the maximum cost recoverable in rates for that tier under the Cable Act of 1992. If that cost were divided by the projected number of subscribers, the entire cost would be recovered from the rates for the basic tier. Alternatively, the costs of the basic tier could be calculated as direct channel costs, minus advertising revenues, plus an allocation of other costs based on relative direct channel costs. If the costs for programming on basic tier channels were lower than for other tiers, this method would allocate fewer costs to the basic tier than the per-channel method. It would also be consistent with this Commission's Part 64 rules, which require that joint and common costs not directly assignable, or attributable using a cost-causative linkage to a directly assignable cost, be

allocated based on a general allocator computed using the ratio of all expenses directly assigned or attributed.[234] We seek comment on the proportion of costs directly assignable, on relative direct channel costs, and on whether a direct cost plus general allocator formula would produce a fair and reasonable rate for the basic tier.

19. We seek comment on these two alternatives for design of rates for the basic service tier. Other allocation methods may also be consistent with our rules. We note that, for example, the methods we have proposed may be combined. Joint and common costs could be allocated on relative number of channels between pay, leased access, and all other. Within the all other category, joint and common costs could be allocated on relative direct channel costs. We seek comment on other allocation methods that would produce a basic tier rate reasonable for both subscribers and operators. We seek comment generally on requirements that should be established for design of rates by cable operators seeking to justify rates higher than the benchmark.

234 See Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, CC Docket No. 86-111, 2 FCC Rcd. 1298 (1987), paragraph 161 (a)(3)(iii), recon., 2 FCC Rcd 6283 (1987), further recon, 3 FCC Rcd 6701 (1988), aff'd sub nom. Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

APPENDIX C

FEDERAL COMMUNICATIONS COMMISSION

ANNUAL REPORT OF CABLE TELEVISION SYSTEMS

FINANCIAL UNIT DATA

FCC FORM 326, SCHEDULE 1

This is Schedule 1 of YOUR FCC FORM 326. It must be completed and/or corrected and returned to the Commission with Schedules 2 through 5. If the communities listed do not reflect your present consolidation, add or delete as necessary. If the pay cable fee is a "per program", rather than "per month" charge, attach a rate schedule. Include cents with all fee data.

PREVIOUSLY FILED:

SYSTEM COMMUNITIES COMPRISING THIS FINANCIAL UNIT

IDENT

NAME

TYPE

OPERATIONAL STATUS

INSTALLATION FEE

SUBSCRIBER FEE

MONTHLY PAY CABLE FEE

SCHEDULE 2 **CABLE TELEVISION REVENUES AND EXPENSES**

FOR PERIOD BEGINNING: 19| | | mo| | | dy| | | ending: 19| | | mo| | | dy| | |

Line No.	ITEM	AMOUNT (OMIT CENTS)
	OPERATING REVENUES	
1	Installation Revenue	
2	Regular Subscriber Revenue	
3	Pet Program or Per Channel Gross Revenue (Pay Television)	
4	Advertising Revenue	
5	Special Service Revenue	
6	Other Revenue	
7	Total Operating Revenues	
	OPERATING EXPENSES	
	SERVICE EXPENSES:	
8	Salaries, Wages, and Employee Benefits	
9	Pole Rentals	
10	Duct Rentals	
11	Private Microwave Service (CARS)	
12	Common Carrier Microwave Service	
13	Total Tariff (Leaseback) Charges (Applies only to Systems receiving telephone company channel service.)	
14	All Other Service Expenses	
15	**PAYMENTS TO PAY CABLE PROGRAM SUPPLIES**	
	ORIGINATION EXPENSES:	
16	Salaries, Wages, and Employee Benefits	
17	All Other Origination Expenses	
	SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES:	
18	Salaries, Wages, and Employee Benefits	
19	Franchise Fees	
20	Copyright Fees	
21	All Other Selling, General, and Administrative Expenses	
22	**TOTAL OPERATING EXPENSE**	
23	**TOTAL OPERATING INCOME**	
	DEPRECIATION AND AMORTIZATION	
24	Depreciation	
25	Amortization	
	OTHER INCOME AND EXPENSES	
	OTHER INCOME	
26	Total Other Income	
	OTHER EXPENSES:	
27	Interest	
28	Miscellaneous	
29	**TOTAL OTHER INCOME (OR LOSS)**	
30	**EXTRAORDINARY ITEMS**	

Line No.	Item	
31	**TOTAL INCOME (OR LOSS) BEFORE TAXES**	
	TOTAL ASSETS:	
32	To be entered only for those systems (fewer than 1,000 subscribers) exempted from filing schedule 3.	

SCHEDULE 3 — **BALANCE SHEET INFORMATION**

Line No.	ITEM	
	ASSETS	
	CURRENT ASSETS:	
1	Cash	
2	Accounts Receivable	
3	Other Current Assets	
4	Total Current Assets	
	FIXED ASSETS:	
5	Land and Buildings	
6	Headend	
7	Trunk and Distribution System	
8	Subscriber Devices	
9	Program Origination Equipment	
10	Construction Work in Progress	
11	Other Fixed Assets	
12	Plant Adjustment	
13	Less: Accumulated Depreciation	
14	Total Fixed Assets	
	OTHER ASSETS:	
15	Other Assets	
16	Less: Accumulated Amortization	
17	Total Other Assets	
18	**TOTAL ASSETS**	
	LIABILITIES	
	CURRENT LIABILITIES:	
19	Loans Payable	
20	Accounts Payable	
21	Other Current Liabilities	
22	Total Current Liabilities	
	DEFERRED CREDITS:	
23	Total Deferred Credits	
	LONG TERM DEBT:	
24	Total Long Term Debt	
	OWNER'S EQUITY:	
25	Total Stock Issued	
26	Proprietor's Equity	
27	Retained Earnings	
28	Other Owner's Equity	
29	Total Owner's Equity	
30	**TOTAL LIABILITY AND OWNER'S EQUITY**	
	CHECK METHOD OF DEPRECIATION USED	

| (1) Straight line__ (2) Declining Balance__ |
31 | (3) Double Declining Balance__ |
| (4) Sum-of-the-Year-Digits__ |
| (5) Other__ |

SCHEDULE 4 **SUPPLEMENTAL ACCOUNTING INFORMATION**

PART A	Amortization term in year	Amortization method used (code)	Amount capitalzed during yr.	Amount amortzed during yr.
1. Deferred System Development Costs			$	$
2. Franchise Costs (recorded as assets			$	&
3. Goodwill			$	$

CODES | (1) Straight line (3) Double declining balance (5) Other
| (2) Declining balance (4) Sum-of-the-years digits

PART B	Total Capitalized	Amt. capitalized During year	Useful Life years
4. Capitalized Interest on System Construction	$	$	$

PART C	Total Amt. of Asset	Amount NOT Being Amortized	Amount Being Amortized
5. Deferred Sys. Develpmnt. costs	$	$	$
6. Franchise Costs (recorded as assets)	$	$	$
7. Goodwill	$	$	$

PART D	Total Amt. of Allocated Costs	Method Used To Allocate Costs To System	Code
8. Overhead Costs Allocated To System	$	$	$

PART E	Amount
9. Original Cost of Fixed Assets (Seller's Book Value)	$
10. Portion of Purchase Price Allocated to Seller's Book Value	$
11. Recorded Cost of Fixed Assets by Purchaser	$

PART F	Fixed asset classification	Amount	Useful Life Years	Amount	Useful Life Years
12. Estimated Useful Lives of Fixed Assets		$		$	
		$		$	
		$		$	
		$		$	

PART G	Amount	Number of Persons
13. Salaries to Owners	$	
14. Other Direct Payment Included in Total	Total Amount	Type
15. Expense Payments to Spouse or Relatives	$	

16. Expense Payments to Spouse or Relatives | $ | | | |

TYPE	(1) Rent	(3) Payment for equipment	(5) Travel & Entertainment
	(2) Payments for services	(4) Payments for supplies	(6) Other

SCHEDULE 5 **EMPLOYMENT**

Indicate the number of employees for the work week in which the last day of the Fiscal Year fell.		NUMBER OF EMPLOYEES
	FULL TIME	
	PART TIME	

CERTIFICATION

THIS REPORT MUST BE CERTIFIED BY THE INDIVIDUAL OWNING THE REPORTING CABLE TELEVISION SYSTEM. IF INDIVIDUALLY OWNED; BY A PARTNERSHIP; BY AN OFFICER OF THE CORPORATION, IF A CORPORATION; OR BY A REPRESENTATIVE HOLDING POWER OF ATTORNEY IN A CASE OF PHYSICAL DISABILITY OF AN INDIVIDUAL OWNER OR HIS/HER ABSENCE FROM THE UNITED STATES.

I CERTIFY THAT I HAVE EXAMINED THIS REPORT, AND THAT ALL STATEMENTS OF FACT CONTAINED THEREIN ARE TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, AND ARE MADE IN GOOD FAITH.

SIGNATURE			
PRINTED NAME OF PERSON SIGNING			DATE
LEGAL NAME OF RESPONDENT			
RESPONDENTS ADDRESS	street address		
	city	state	DATE

FCC Form 326

APPENDIX D

PROPOSED FORM FOR LOCAL FRANCHISING AUTHORITY CERTIFICATION

FCC ____ APPROVED OMB ______

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

CERTIFICATION OF FRANCHISING AUTHORITY TO REGULATE BASIC CABLE SERVICE RATES AND INITIAL FINDING OF LACK OF EFFECTIVE COMPETITION

(Under 47 C.F.R. _____)

1. a) Name of Franchising Authority:
   b) Address:
   c) Telephone:

2. a) Name(s) and address(es) of cable system(s) within your jurisdiction.
   b) Name(s) of system(s) you claim to be subject to regulation.
   c) Have you served a copy of this form on all parties listed in b?
   Yes__ No__

3) Will your franchising authority adopt and administer regulations with respect to basic cable service that are consistent with the regulations adopted by the FCC pursuant to 47 U.S.C. § 543 (b)?
   Yes__ No__

4) With respect to the franchising authority's regulations referred to in Question 3:

   a) Does your franchising authority have the legal authority to adopt them?
   Yes__ No__
   b) Does your franchising authority have the personnel to administer them?
   Yes__ No__

5) Do the procedural laws and regulations applicable to rate regulation proceedings by your franchising authority provide a reasonable opportunity for consideration of the views of interested parties?
   Yes__ No__

6) Is (are) the cable system(s) listed in 2b subject to effective competition?

(Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (B) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (C) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.)

Yes__ No__